by the defendant. *Held*, that the bill must be dismissed—the costs to follow the event: *Tildesley* vs. *Clarkson*.

There is, in such cases, an implied contract on the part of the landlord to finish and deliver the house to an incoming tenant in a complete tenantable state of repair, proper for a house of the character agreed to be demised: *Id.*

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Parol Evidence to Explain a Written Agreement.—Where money was loaned by a citizen of New York, to a firm doing business at Davenport, Iowa, and the money was remitted to them at that place, and a certificate of deposit taken, dated at Davenport, by which the borrowers acknowledged the receipt of the money, and promised to pay the same to the order of the lender, one year from date, on the return of the certificate, with interest at the rate of ten per cent. per annum; *it was held*, that in an action upon the certificate, parol evidence could not be received to prove that it was a part of the contract that the principal and interest money mentioned in the certificate should be payable at P., in the State of New York: *Potter* vs. *Tallman et al.*

When parties choose to put their contract in writing, courts are to ascertain the place where the contract was made, the time when, and the place where the money is payable, as well as the rate of interest, by reference to the written instrument: *Id.*

Bailees—Common Carriers.—If goods are taken from a bailee by the authority of law, exercised through regular and valid proceedings, it will be a defence to an action by the bailor, against him: *Bliven et al.* vs. *The Hudson River Railroad Company.*

The bailee must assure himself, and show the court that the proceedings are regular and valid, but he is not bound to litigate for his bailor, or to show that the judgment or decision of the tribunal issuing the process, or seizing the goods, was correct in law or in fact: *Id.*

This is the rule as to bailees in general; and it includes the case of common carriers: *Id.*

[1] From Hon. O. L. Barbour, Reporter of the Court.

Railroad Companies, as Carriers of Passengers.—The plaintiff, after having paid his fare from New York to Albany, in a passenger train, and travelled a part of the distance, left the train, giving up his ticket, and receiving a conductor's check in exchange. He subsequently got upon a freight train, and continued his journey in a caboose car, sometimes used for carrying passengers. His fare was at first demanded, and paid, but subsequently the conductor returned the money, and allowed him to ride in the freight train by virtue of his ticket. While so riding, the plaintiff was injured, by means of a collision. *Held*, that after receiving the plaintiff on a train upon which other persons were carried for hire, demanding fare from him, then returning it, and recognising his ticket as evidence of a contract authorizing him to be carried without further charge, it was too late for the defendants to say that he was wrongfully there, or was guilty of any fault in leaving the ordinary passenger train and travelling upon a freight train: *Edgerton* vs. *The New York & Harlem Railroad Company.*

Held also, that it did not lie in the mouths of the defendants to say that the caboose car was so manifestly dangerous that the plaintiff was guilty of negligence in getting into it to ride; and that there was nothing in the conduct of the plaintiff to prevent his recovering for his injuries if they were sustained in consequence of any fault or misconduct of the defendants: *Id.*

Carriers of passengers are bound to carry safely those whom they undertake to carry, as far as human care and foresight will go. When an injury is sustained by a passenger in consequence of anything in the construction or management of the vehicle or the machinery of transportation, the carrier is responsible, if any exercise of care or foresight would have prevented it: *Id.*

Sheriff's Sales—Statute of Frauds—Principal and Agent—It *seems* that a judicial sale by a sheriff or referee, or other officer of the court, is not within the provisions of the statute of frauds, requiring the contract of sale to be subscribed by the purchaser or his agent. If it be, however, the written report or certificate of the referee, or the note or memorandum made by the auctioneer, will satisfy the provisions of the statute, and remove all objection to the validity of the contract to purchase, on the ground that no written contract was subscribed by the purchaser: *Hegeman* vs. *Johnson et al.*

Where one purchases property at a judicial sale, as the agent of another

and in his name, but without authority from the principal, and consequently the contract is not binding upon the latter, the agent is not personally liable in an action upon the contract; nor can he be compelled, by the exercise of the equitable jurisdiction of the court, to perform it as his own: *Id.*

Sureties, how Relieved.—If a judgment has been irregularly obtained, sureties can be heard, if they apply seasonably, on motion to set aside the judgment and let them in to defend the original action. They may also be allowed, for their own protection, to defend an action brought against their principal: *Jewett* vs. *Crane.*

Sureties in actions are not permitted generally, at the trial of an action for the breach of their undertaking, to show that the practice or proceedings in the action wherein their undertaking was executed, were irregular. Irregularities in practice are corrected on motion: *Id.*

Former Writ or Recovery.—When it appears on the very face of a judgment that the plaintiff's demand was not passed upon by the court, but that the plaintiff applied for a discontinuance, and on its being refused he declined giving any evidence, and the court merely considered the counter claim of the defendant, and gave a judgment in his favor for the amount, the plaintiff may bring another suit for the demand which he declined to submit for adjudication in the former action: *Jones* vs. *Underwood.*

In an equity action for an account, sums received by the accounting party after the commencement of the action may be included in the account taken; but in case those sums are not included, the party entitled to them is not precluded, by the judgment, from commencing another suit to recover the amount: *Tyler* vs. *Willis.*

Usury—Purchase of a Usurious Note.—An agreement, by borrowers, to pay to the lender one-third of the profits of their business as co-partners, in addition to the legal interest, for the use of the money loaned, is usurious and void: *Sweet* vs. *Spence.*

And a promissory note, given by the borrowers, in performance of such an agreement, being void, furnishes no consideration for a note given by a third person to the lender, on the purchase of the original note by them: *Id.*

Partnership.—Where a promissory note is made by one of the partners in a firm, and the partnership name is subscribed thereto by him, by which the firm *jointly* and *severally* promise to pay to the payee the sum specified

therein, the partner who made the note may be sued upon it alone, without joining the other as a defendant: *Snow* vs. *Howard.*

Misjoinder of Parties, Demurrer for.—When two or more plaintiffs unite in bringing a joint action, and the facts stated do not show a joint cause of action in them, a demurrer will lie, upon the ground that the complaint does not state facts sufficient to constitute a cause of action: *Mann & Wife* vs. *Marsh.*

When husband and wife unite in bringing an action, and the complaint shows that one alone should bring the action, without the other, a demurrer will lie for the same reason: *Id.*

Mandamus.—As respects judicial duties, the writ of mandamus merely commands the court or officer to proceed without directing in what manner the duty shall be executed: *The People ex rel.* vs. *Baker.*

A referee may be compelled by mandamus to settle a case and exceptions, and to settle it correctly. But before the writ will be issued to compel the settlement in a particular way, it must be made to appear that when so settled it will be according to the facts: *Id.*

The return to a writ of mandamus must be good, tested by the ordinary rules of pleading, both in form and substance. It should state facts and not evidence, and should be certain to a common intent. The relator may demur or plead to all or any of the material facts contained therein: *Id.*

A mandamus directing a referee to settle a case and exceptions, should contain appropriate recitals from which it will be seen that the case and exceptions, when settled according to the requirements of the writ, will give a true history of the trial, especially in the particulars therein specified: *Id.*

The court will not command the case to be falsely settled, but only according to the truth: *Id.*

If the relator demands that a case and exceptions be settled in a particular way, without showing any right to have them so settled, the writ will be held defective in substance: *Id.*

Where the defendant avers, in his return to the writ, that he has duly and truly settled the case according to the truth, and that to settle it in the manner required by the writ would be contrary to the truth, this will be held to be a full and perfect answer: *Id.*

Matters arising *pendente lite,* on a proceeding by mandamus, may be set up by the parties by answer or plea: *Id.*

It seems a writ of mandamus may be amended after return, and demurrer thereto: *Id.*

SUPREME COURT OF CONNECTICUT.[1]

Mortgage to secure Future Advances—Rights of subsequent Lien Creditors —Set-off—Whether Property of a Foreign Sovereign can be Attached—After acquired Property when bound by a Mortgage.—R. & L., in January, 1852, entered into a written contract with the respondents, that with the aid of $40,000, to be advanced by the latter, they would purchase land, erect thereon a factory, equip it with all necessary machinery, and manufacture 20,000 rifles for the respondents on or before January 1, 1855; the land and factory to be conveyed to the respondents and the legal title held by them until the contract was performed; the stipulated price of the rifles to be paid on delivery, and a deduction of $2 per rifle to be made from such payments for the repayment of the $40,000 advanced. R. & L., with the aid of the money thus advanced, bought the land and built and equipped the factory, expending more than $100,000 for the purpose. The land was conveyed, by the party from whom it was purchased, directly to the respondents, who thereafter held the legal title. In 1854, R. & L. made a mortgage of the premises to a party to secure a debt of $75,000 for machinery purchased to put into the factory. The mortgage was immediately put upon record, but did not come to the actual knowledge of the respondents until December, 1855. R. & L. had from the first been embarrassed from the want of sufficient funds, and it had been necessary for the respondents to make them large advances from time to time, to enable them to perform the contract, and to prevent their failure. These advances they continued to make down to October, 1856, when R. & L. failed, leaving the contract for the manufacture of 20,000 rifles not fully performed. At this time the balance due to the respondents on account of these advances, beyond the original advance of $40,000 (and certain other advances specially secured), was over $75,000. The mortgagee had taken his mortgage with knowledge of the contract of R. & L. with the respondents, and he afterwards assigned it to a party who, at the time he took it, had such knowledge. On a bill to redeem, brought by the assignee of the mortgage, it was *held*, 1. That the absolute legal title being in the respondents, they were not affected by the record of the mortgage in 1854, and that any advances which they might have made down to December, 1855, when they received actual notice of the mortgage, constituted a valid charge on the real estate, which took precedence of the lien created by the mortgage. 2. That after they received actual notice of the mort-

[1] From John Hooker, Esq., State Reporter.

gage, the respondents still had the right to make all advances to R. & L. which were necessary to enable them to perform the contract, and that these advances became a charge on the real estate precedent to the lien of the mortgage: *Rowan* vs. *Sharp's Rifle Manufacturing Company.*

The contract of 1852, between R. & L. and the respondents, contained a provision that the latter, on giving certain notice, might, at their election, take the entire property at an appraisal. The respondents elected so to take it, during the pendency of the bill to redeem. The petitioner thereupon filed a supplemental bill, setting up this fact, and praying for a decree that the balance of the fund, after paying the prior claim of the respondents upon it, should be paid over to him. The petitioner held the mortgage in behalf of the British Government, and the suit was brought for the benefit of that Government. The respondents filed a cross bill alleging a claim against the British Government, in part for moneys withheld as a stipulated forfeiture for the non-performance, within the time limited, of a contract with the British Government for the manufacture of rifles, the delay in the performance being alleged to have been caused by the wrongful interference and tortious acts of the agents of the British Government, and in part for damages for tortious acts of such agents in injuring parts of rifles submitted to them for inspection under the contract. The petitioner denied the right of the respondents to make the set-off, on the ground that the claim was founded on tort, and that the British Government, having attachable property within the State, could be sued by the respondents in an action at law. *Held*, that the respondents could set off the claim for moneys so withheld, which was to be regarded as a claim founded on contract. Whether they could set off the claim for the damages: *Quere: Id.*

Whether the British Government, having attachable property in this State, could be sued in our courts: *Quere:* The court inclined to the opinion that it could not: *Id.*

Where a mortgage of a factory and its equipments embraced in its terms such machinery and stock as should be afterwards purchased and placed upon the premises, and the mortgagee had afterwards taken possession of the factory with such subsequently acquired property, it was held that, whatever effect was to be given to the provision in itself, it became operative upon possession being taken by the mortgagee, so as to make the mortgagee chargeable with the property in favor of later incumbrancers, as a part of the mortgage fund: *Id.*

SUPREME COURT OF MASSACHUSETTS.[1]

Municipal Corporation—Liability for Obstruction of Highway.—A large vehicle used as a daguerrean saloon, standing partly within the limits of a highway, but outside of and several feet from the travelled path, is not a defect in the highway, which will entitle a traveller to recover against a town damages for the injuries sustained by him, if his horse, while driven by himself, is frightened thereby, and becomes unmanageable, and runs for some distance, and upon an embankment, so that the carriage is broken, and himself thrown upon the ground and injured: *Keith* vs. *Inhabitants of Easton.*

Case—False Representations of Credit.—No action can be maintained to charge a defendant upon or by reason of false representations concerning the credit and ability of another, made in order to induce the plaintiff to indorse a note signed by such other person, which the defendant received and used for his own benefit, unless the representations were made in writing: *Mann* vs. *Blanchard.*

Witness—Husband and Wife—Books of Original Entries.—In an action against an executor to recover the price of goods sold and delivered to the wife of the testator in his lifetime, she cannot be allowed to testify to a private coversation with her husband in which he ratified her purchases; but she is a competent witness as to other facts. And the plaintiff's books of account are inadmissible to prove that credit was given to the testator; but they, in connection with his suppletory oath, are admissible to prove the delivery of the goods: *Dexter* vs. *Booth.*

Mortgage to Secure Support and Maintenance of Mortgagees—Condition when Broken.—The condition of a mortgage, which provides that the mortgagor "shall well and comfortably support and maintain" the mortgagees, "in sickness and in health, for and during their and each of their natural lives, providing things necessary for their comfort and comfortable subsistence while in health, and suitable medical attendance and nursing when sick, during the term of their natural lives as aforesaid," is broken, if the mortgagor, after knowledge that they are at a reasonable place, where they intend to receive their support, declares to the person in whose family they are that he will not pay for their board there, and afterwards neither pays nor offers to pay anything therefor, although no special demand upon him is made for such support: *Pettee* vs. *Case.*

[1] From Charles Allen, Esq., State Reporter.

Towns—Gift to Public Use—Condition.—A town may erect a town-house of sufficient capacity for all the business which it may have occasion to do in such a building, and may, in its erection, make suitable provision for its prospective wants; and if the building contains room not wanted for the time being for municipal business, the town may let them temporarily, or allow them to be used gratuitously. And the condition of a deed of land to the inhabitants of a town, which provides that the same shall "not be used for any other purpose than as a place for a town-house for said inhabitants," is not broken by the erection thereon of a town-house with a hall in the second story, which has been used for miscellaneous purposes, and rooms upon the sides of the entrance, which have been let and used for shops and other purposes not connected with municipal business, and the construction and use for several years of a lock-up under the building: *French* vs. *Quincy*.

NOTICES OF NEW BOOKS.

SUBSTITUTED LIABILITIES: Being a comparative view of the Civil Law and the Common Law on the doctrines of Subrogation, Novation, and Delegation. Part I. on Subrogation. Cambridge: Printed by Allen & Farnham, 1861; Philadelphia. CHILDS & PETERSON.

The illustration of treatises on Common Law subjects, by reference to the writings of continental jurists, has no doubt been somewhat overdone of late years. Since Judge Story set the fashion, it has become a constant practice to lard law books over with quotations from the Pandects, and from all the classical and mediæval jurisconsults, which, if not of much intrinsic value, give, it is supposed, a certain flavor and finish to the work. So fixed is this habit, that on certain topics there are now stock citations, which are handed down from one author to another, like heir looms, and to omit them in their customary places would be considered as a sure proof of a plebeian taste, or of an affectation of originality. Yet very often, the only end they serve is to let us know that the Civil Law either agrees or disagrees with our own, on points which are perfectly well settled. and which need neither illumination nor development from any other source. The information thus given may be interesting to the student of comparative jurisprudence, as it would equally be if it related to the state of the Chinese or Hindoo law on the subject; but there is no reason why it should be conveyed in long Latin paragraphs, dug out of Cujacius or the Digest, when a simple statement of the fact would answer every purpose.